

Policy Response on A Fundamental Review of Social Housing Allocations: Proposal 4

“The NIHE can meet their duty to homeless applicants on a tenure-neutral basis, provided that the accommodation meets certain conditions”

DfC proposal

“We propose that the NIHE could, where appropriate, meet its homelessness duty by securing suitable accommodation in the private rented sector, subject to certain safeguards. This means, in line with practice in other areas of the United Kingdom, that reasonable accommodation could include private rented sector accommodation.

This would enable the NIHE to meet its homelessness duty on a tenure-neutral basis, provided the accommodation that it offers:

- is reasonable for the household to occupy;
- is of the appropriate standard; and
- is available for a reasonable period of time, e.g. a 12-month tenancy.”

Although the law currently permits the NIHE to discharge its duty into the PRS, the Executive normally seeks to meet its duty by offering a tenancy in a social home. However, the Department state that *‘the reality for many people is that there may be few social homes available in their chosen areas or, in very high-demand areas, they may have insufficient priority to access an allocation when it becomes available.’*

The Department consider that:

‘the ongoing improvements to the regulation of the private rented sector provide evidence that the NIHE can meet its duty to homeless applicants in appropriate private rented sector accommodation. Meeting the homelessness duty on a tenure-neutral basis is crucial in providing a greater and more effective range of solutions to meet a household’s housing need.’

The Department consulted on this proposal in 2010; stakeholders welcomed this proposal, provided greater regulation and security of tenure were secured for the private rented sector.

The Department state that, since 2010, the Department has worked on such improvements. These improvements are specifically named as the Tenancy Deposit and Landlord Registration schemes. The Department consider that these steps *‘have helped to improve tenancy management and provided greater security of tenure for long-term private rented tenants.’*

Housing Rights' position

Housing Rights recognises the need, given the shortage of social housing, to make effective use of the private rented sector. However, it is our view that permitting the Housing Executive to discharge homeless applicants into the private sector is premature. Developments since 2010 have not affected sufficient improvements in standards, security of tenure and tenancy management to make the private rented sector appropriate and reasonable for the discharge of homeless households.

Therefore, Housing Rights strongly believes it is vital that the regulation and standards of the private rented sector are substantially increased before the Housing Executive begins any active policy of discharging to this sector.

1. "Accommodation of the appropriate standard"

The Department state that the Housing Executive will only be permitted to discharge into the PRS if 'the accommodation is of the appropriate standard.' Housing Rights would welcome clarity from the Department on two areas: firstly how "appropriate standard" will be defined, and secondly how the enforcement and realisation of this standard will be executed and quality assured.

The Department will be aware, in the context of property standards, of its separate and ongoing review of the statutory minimum Housing Fitness Standard for all tenures of dwelling. In our response to this Review, Housing Rights has highlighted significant concerns both with the current low level of this Standard, and at levels of disrepair in the private rented sector.¹ For example, the current Fitness Standard requires 'adequate provision for . . . heating' – in practice, this requirement can be satisfied by the presence of an electrical socket into which the tenant can plug an electric heater.

Housing Rights strongly believes that the current housing Standard does not robustly ensure that citizens are living in housing of a decent minimum standard. There are also issues with the lack of legal protections afforded in relation to the current Standard, and the inadequacy of Councils' statutory enforcement powers in relation to the Standard. Additionally, Housing Rights is concerned that issues with poor standard housing are disproportionately high in the PRS. Between June 2015 and June 2016², we dealt with over 3,000 issues relating to housing conditions: 71% of these originated in the PRS, compared to 14% in the social rented sector. Housing Rights notes the recent publication of the Housing Executive's revised preliminary report of the 2016 House Condition Survey, which found that 1.6% of private rented sector properties failed to meet the current Housing Fitness Standard; this was higher than 1.1% of owner-occupied properties, and literally a 'nil or negligible' number of social properties.³ It is further likely that the 1.6% of PRS properties which fail the current Fitness Standard are concentrated in the cheaper properties on the market – and given that the Housing Benefit LHA cap will pay for only the cheapest 30% of the local private sector, this is likely where homeless households would be discharged within the PRS.

If the Department is proposing to permit the Housing Executive to actively discharge its homeless duty into the private sector, then given the above-identified issues with both the current Standard and current levels of disrepair specifically in the PRS, Housing Rights would recommend that this only be considered consequent to the completion of the current review of the Housing Fitness Standard, and the execution of any improvements which are identified as necessary. Housing Rights would also encourage clarity from the Department on how any new or amended Standard would be actually executed and quality assured, in order to ensure any legislative improvements are actually realised for tenants.

¹ See Housing Rights (2016) 'Review of the statutory minimum housing fitness standard for all tenures of dwelling'

² We can update these stats – these are just pulled from our Fitness Standard response

³ Northern Ireland Housing Executive (2017) 'NI House Condition Survey 2016: Revised Preliminary Report', p9

2. “Accommodation available for a reasonable period of time”

In its proposal, the Department states that the Housing Executive should only be permitted to discharge into the private sector where the tenancy is available for a ‘reasonable period of time, e.g. a 12-month tenancy.’ It is Housing Rights’ strong view that a 12-month tenancy is not long enough to justify the Housing Executive discharging their duty into the private sector. 12 months is not nearly long enough to provide sufficient stability and security to satisfy the discharge of the homeless duty.

In this light, Housing Rights notes the Joseph Rowntree Foundation’s research into [‘Poverty, Evictions and Forced Moves.’](#) In a context where local authorities have been able to discharge homeless households into the private sector since 2011, this research finds that “no fault” evictions – whereby a landlord can evict a tenant without any specific grounds, after their tenancy has reached the end of its fixed term – have increased significantly. This often leads to a pattern of recurring homelessness for households attempting to sustain private tenancies. In this regard, Housing Rights notes the current NIHE Homeless Strategy, which includes an indicator of reducing ‘instances of repeat homelessness.’⁴

If the Department is proposing to permit the Housing Executive to discharge into the private sector, Housing Rights strongly feels that the minimum length of tenancy should be longer than 12 months, to permit homeless households discharged to the private sector greater stability and security. Housing Rights would encourage the Department to consider recent legislative developments in Scotland, where [private tenancies from 1st December 2017 are indefinite](#), and [can only be ended by the landlord on prescribed grounds](#); and the Republic of Ireland, where [private tenancies last 4 years by default](#).

3. “Improved tenancy management and security of tenure” has not occurred

The Department states that the proposal to permit discharge into the PRS was originally consulted on in 2010, when ‘stakeholders welcomed this proposal provided there was greater regulation of the private rented sector and greater security of tenure within it. Since then the Department has worked on such improvements.’⁵

Housing Rights does not agree that regulation and standards within the PRS have improved sufficiently to permit the Housing Executive to discharge its duty into the private rented sector:

- Good “tenancy management” encompasses a broad range of factors, including the initial marketing of a property; letting the property; entering tenancy agreements; collecting rent; maintaining the property; and ending a tenancy. The Tenancy Deposit Scheme can only be said to contribute to one facet of “tenancy management.” The Tenancy Deposit Scheme referred to by the Department has not improved security of tenure for private tenants in any sense, and can only claim to have improved “tenancy management” in the specific context of deposits.
- Similarly, the Landlord Registration Scheme cannot be considered to have improved security of tenure. Under Landlord Registration, private landlords are simply required to register their status as landlords, and allow very limited information – their name and the properties they let – to be placed on a publicly searchable database.⁶ Whilst there is scope for the framework of the Landlord Registration scheme to be valuably used to further improve regulation and support landlords, in its current form, the scheme is simply a database. Housing Rights would encourage the Department to again consider using the Landlord Registration database as a basis for [landlord licensing](#). The potential for discharge of homeless households increases the need for a regulatory mechanism such as landlord licensing, which could provide an effective and valuable framework to ensure the quality of accommodation for homeless households.

⁴ Northern Ireland Housing Executive (2017) ‘Ending Homelessness Together: Homelessness Strategy for Northern Ireland 2017-2022’, p17

⁵ DfC (2017) p35

⁶ See <https://www.nidirect.gov.uk/services/landlord-search>

Conclusion

The private rented sector in Northern Ireland has considerable potential to become a “sector of choice”, which could provide decent homes for FDA homeless households. Indeed, previous research commissioned by Housing Rights found that evidence from parts of Europe and the USA ‘suggests that the PRS can be used effectively to meet the needs of even the most vulnerable homeless, and create sustainable, long term tenancies.’⁷

However, the private sector in Northern Ireland does not, in Housing Rights’ view, meet the standards necessary for the Housing Executive to discharge its duty into this sector. The Department considers that improvements to the PRS since 2010 have resulted in greater regulation, improved tenancy management and greater security of tenure for private tenants. However, whilst the reforms since 2010 – specifically the Tenancy Deposit and Landlord Registration schemes – are welcome, they are highly limited, and further improvements would be needed before private sector discharge would be acceptable.

Specifically, the Department should give consideration to the below, before any active policy step is taken to permit the Housing Executive to discharge into the PRS:

- **Execution of the “Proposals for Change” to the PRS.** The Department’s proposals for change to the private rented sector⁸ were published and consulted on in early 2017. Proposals on tenancy management and security of tenure, as well as supply, affordability, property standards and dispute resolution, have been advanced. These proposals should be reviewed in light of responses to this consultation, and consequently brought into law.
- **Execution of the Review of the Housing Fitness Standard.** The Department’s review of the fitness standard was consulted upon in 2016. Given both the general concerns with the current statutory Standard, and the fact that the PRS is home to a disproportionate share of sub-standard housing (both outlined above), Housing Rights would encourage the Department to bring forward proposals for change to this Standard for consultation, and execute any improvements to this Standard.
- **Longer tenancy terms for FDA-discharge tenants.** If FDA households are to be discharged into the PRS, Housing Rights recommends that the Department increase the minimum tenancy term beyond the proposed 12 months, and consider recent developments in private tenancies in Scotland and the Republic of Ireland.

For further information contact policy@housingrights.org.uk or call 028 9024 5640

⁷ Ellison E, Pleace N & Hanvey E (2012) ‘Meeting the housing needs of vulnerable homeless people in the private rented sector in Northern Ireland’, p9

⁸ Department for Communities (2017) ‘Private Rented Sector: Proposals for change’